

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JIMMY D. HENRY

Claimant

VS.

THE BOEING COMPANY

Respondent

AND

**INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA**

Insurance Carrier

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Docket No. 1,022,801

ORDER

Respondent and its insurance carrier (respondent) appealed the August 4, 2005, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

In the August 4, 2005, preliminary hearing Order, Judge Barnes awarded claimant temporary total disability benefits for the period from June 17, 2005, to July 25, 2005.

Respondent contends the Judge erred. Respondent argues that claimant was not entitled to receive those benefits as he received the equivalent of 19 weeks of severance pay that would have covered the period in question. Accordingly, respondent requests the Board to reverse the August 4, 2005, Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes that this appeal should be dismissed.

This is an appeal from a preliminary hearing order. Accordingly, not all findings or issues are subject to review.

The issues of whether a worker meets the statutory definition of being temporarily and totally disabled and of whether an employer is entitled to receive a credit or an offset due to the payment of severance pay are not preliminary hearing issues that may be

appealed. The preliminary hearing statute, K.S.A. 44-534a, provides that only the following preliminary hearing findings and issues may be appealed:

1. Whether the employee sustained an accidental injury,
2. Whether the injury arose out of and in the course of employment,
3. Whether notice and claim were timely, and
4. Whether certain defenses apply.¹

In addition, K.S.A. 2004 Supp. 44-551(b)(2)(A) provides that a preliminary hearing award may be reviewed if the judge exceeds his or her jurisdiction. But there is no question a judge has the authority and jurisdiction to award temporary total disability benefits at a preliminary hearing.

In short, the issues that respondent requests the Board to address at this time may not be appealed from a preliminary hearing award. Instead, those issues must be reserved for the time of final award. As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.²

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this ____ day of September, 2005.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Eric K. Kuhn, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ And these must go to the compensability of the claim. *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

² K.S.A. 44-534a(a)(2).